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In re Application of	:	
BRAND et al.	:	DECISION ON
Application No.: 09/980,972	:	PAPERS UNDER 37 CFR 1.42
PCT No.: PCT/DE00/01416	:	
Int. Filing Date: 02 May 2000	:	
Priority Date: 30 April 1999	:	
Attorney Docket No.: 101196-66	:	
For: AGENT FOR GENE THERAPY AND	:	
FOR THE PREVENTION OF	:	
METASTASES, AS WELL FOR THE	:	
GENE THERAPY OF TUMORS	:	

This is a response to "Response to Decision on Papers under 37 CFR 1.42" filed 09 August 2002 and 03 September 2002, which is being treated as a renewed request under 37 CFR 1.42. No petition fee is required.

BACKGROUND

On 02 May 2000, applicants filed international application PCT/DE00/01416, which claimed a priority date of 30 April 1999. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 09 November 2000. A proper Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of nineteen months from the priority date. As a result, the deadline for payment of the basic national fee was extended to expire on 30 October 2001.

On 29 October 2001, applicants filed a transmittal letter for entry into the national stage in the United States accompanied, inter alia, by: the basic national fee and a preliminary amendment.

On 30 January 2002, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that oath or declaration executed by the inventor and an English translation of the international application was required. The notification set a TWO (2) MONTH period for response.

On 14 March 2002, applicants filed a translation of the international application and a declaration/power of attorney executed by: Karsten Brand and Andrew Baker as

inventors; and Irene Strauss on behalf of deceased inventor Michael Strauss. In a decision dated 26 June 2002, applicants request under 37 CFR 1.42 was refused.

On 09 August 2002, applicants filed "Response to Decision on Papers under 37 CFR 1.42."

DISCUSSION

37 CFR 1.42 *When the Inventor is Dead*, states, in part:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

Section 409.01(a) of the Manual of Patent Examining Procedure (MPEP) states that the application can also be executed by "all of the heirs" of the deceased inventor, where no legal representative has been appointed.

As stated in the previous decision, the declaration submitted on 14 March 2002 was executed by Irene Strauss as "legal representative (or heirs)" to the deceased inventor Michael Strauss. Bruce S. Londa avers in the 09 August 2002 response that Irene Strauss is the "sole heir" of the deceased inventor. The declaration is acceptable under 37 CFR 1.42 and complies with 37 CFR 1.497(a)-(b). In addition, the supplemental declaration filed 03 September 2002 identifies Irene Strauss as the sole heir.

CONCLUSION

The papers filed under 37 CFR 1.42 are ACCEPTED.

The application has an international filing date of 02 May 2000, under 35 U.S.C. 363, and a 35 U.S.C. 371(c) date of **14 March 2002**.

This application is being forwarded to the National Stage Processing Branch of the International Division for continued national stage processing.



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